IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.N.KRISHNAN

SATURDAY, THE 18TH AUGUST 2007 / 27TH SRAVANA 1929

WP(C).No. 22705 of 2007(C)

OP.107/2006 of II ADDL. DISTRICT COURT, TRIVANDRUM
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PETITIONER:

SURESH BABU, VILAYIL VEEDU,
AZHOOR, PERUMKUZHY,
THIRUVANANTHAPURAM.

BY ADV. SRI.D.KISHORE

RESPONDENTS:
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1. **P.RAMASWAMY, AGED 74 YEARS,**
   S/O PONNAYYA CHETTIYAR,
   RAM BHAVAN, PUNALUR P.O.,
   KOLLAM DISTRICT.
   (2ND RESPONDENT IN THE OP)

2. **GOPAL VISWANATH, AGED 62 YEARS,**
   S/O VISWANATHAN CHETTIYAR, RESIDING AT
   MAMINI 106, SANTHI NAGAR, SREEKARYAM P.O.,
   THIRUVANANTHAPURAM(ADDL.7TH RESPONDENT)

3. **S.KUMERASAN, AGED 68 YEARS,**
   S/O CHUDALA MUTHUCHETTIYAR, CHAIRMAN SOCIAL
   JUSTICE FOUNDATION, V.V.HOUSE, VANIYAR STREET,
   BALARAMAPURAM(4TH RESPONDENT IN THE OP)

4. **SMT.SAROJA DASAN, AGED 45 YEARS,**
   POA OF L.C.DASAN, RESIDING AT SMANJANA,
   T.C.52/2347, NEMOM P.O.,
   THIRUVANANTHAPURAM-20(ADDL.9TH RESPONDENT)

..2/-

5. ANIL KUMAR, AGED 36 YEARS,
JOINT SECRETARY, MAMINI-106, SANTHI NAGAR,
SREEKARYAM P.O., THIRUVANANTHAPURAM.
(ADDL.10TH RESPONDENT)

6. P.RADHAKRISHNAN, RESIDING AT
C.C.NO.16/884, SAKTHI SAI, SIMON NAGAR,
NAGARCOIL-02.

7. G.GOPINATHAN, RESIDING AT KARTHIKEYA
VH 112, UPPER KERIDIAN ROAD, KURAVANKONAM,
KOWDIAR P.O., THIRUVANANTHAPURAM.

8. AZHOOR SOMAN, RESIDING AT MODEL
AZHOOR P.O., THIRUVANANTHAPURAM.

9. V.MUTHUSWAMY, RESIDING AT
SALINI NIVAS, NETTAYAM KACHANI P.O.,
THIRUVANANTHAPURAM.

10. SANKARAN NARAYANAN, RESIDING AT
KRISHNA BHAVAN, T.C.20/1129, KARAMANA P.O.,
THIRUVANANTHAPURAM.

11. V.KANIKANDAN, RESIDING AT KRISHNAMANI,
AZHOOR P.O., PERUMKUZHY, THIRUVANANTHAPURAM.

12. SWAMIRAJ, RESIDING AT T.C.20/1090,
KASTHURI BHAVAN, M.N.R.A.12, KARAMANA,
THIRUVANANTHAPURAM.

13. S.GOPI, RESIDING AT SREEKARIYAM BHAVAN,
VALIYAKUNNU, KEEZHVILAM P.O., ATTINGAL,
THIRUVANANTHAPURAM.

14. C.VASAVAN, RESIDING AT
POIKAVILA VEEDU, AZHOOR P.O., PERUMKUZHY,
THIRUVANANTHAPURAM.

15. E.S.MANI, RESIDING AT T.C.21/1255,
PANAVILA VEEDU, KARAMANA P.O.,
THIRUVANANTHAPURAM.

..3/-

16. C.VALASAN, RESIDING AT POIKAVILA VEEDU,
AZHOOR P.O., PERUMKUZHY, THIRUVANANTHAPURAM.

17. MOHAN, RESIDING AT T.C.20/1090,
KASTHURI BHAVAN, M.N.R.A.12, KARAMANA P.O.,
THIRUVANANTHAPURAM.

18. PADMAKUMAR, RESIDING AT T.C.1085,
KASTHURI BHAVAN, M.N.R.A.12, KARAMANA,
THIRUVANANTHAPURAM.

19. BALASUBRAMANYAM, RESIDING AT PRAGATHI,
N.P.VI/1249, SANKAR NAGAR,
THIRUVANANTHAPURAM.

20. RAJAPPAN CHETTIYAR, RESIDING AT
RAJIGIRI BHAVAN, CHOOLOTHERUVU P.O.,
MUTHUKULAM NORTH.

21. A.SIVATHANU, RESIDING AT SIVARAJ
AGENCIES, KARAMANA P.O., THIRUVANANTHAPURAM.

22. P.S.RAJARATHINAM, RESIDING AT
L.D.KAMRAID APARTMENTS, NANDAVANAM,
PALAYAM, THIRUVANANTHAPURAM.

23. ANITHA RAMACHANDRAN, RESIDING AT
THENGUVILA VEEDU, AMBALATHARA,
THIRUVANANTHAPURAM.

24. S.THANMA, RESIDING AT SARA NIVAS,
COLONY WEST RAMAVARMAPURAM,
NAGARCOIL.

25. P.MADANAGOPAL, RESIDING AT
SARA NIVAS, COLONY WEST, RAMAVARMAPURAM,
NAGARCOIL.

26. MALIKA , RESIDING AT SAKTHI SAI,
SIMON NAGAR, NAGACOIL.

..4/-

27. INDIRA.R., RESIDING AT SAKTHI SAI,
SAMINON NAGAR, NAGARCOIL.

28. SEENA VEERKUMAR, RESIDING AT
TC 21/1750, NEDUMCAUD, KARAMANA P.O.,
THIRUVANANTHAPURAM.

29. V.THIRUVENGADAM, RESIDING AT 1,82 B
THANGAVEL NADAR, ALAGAPURAM, SALEM-16.

30. R.KRISHNAN, RESIDING AT SARA AGENCIES,
ARYASALA, THIRUVANANTHAPURAM.

31. S.CHANDRI, RESIDING AT
MALARAMANPUTHUR, NAGARCOIL.

32. V.SRINIVASAGAM, RESIDING AT
MELARAMANPUTHUR, NAGARCOIL.

33. P.VEERKUMAR, RESIDING AT C.21/175,
NEDUMCAUD KARAMANA, THIRUVANANTHAPURAM.

34. S.SHANMUGAM, RESIDING AT T.C.21.1780,
NEDUMCAUD, KARMANA, THIRUVANANTHAPURAM.

35. M.RANJITH, RESIDING AT T.C.21/1287,
NEDUMCAUD, KARAMANA, THIRUVANANTHAPURAM.

36. S.S.JAYAKUMAR, RESIDING AT T.C.21/1750,
RADHA BHAVAN, T.C.21/1287, KARAMANA,
THIRUVANANTHAPURAM.

37. P.KRISHNA PRAKASH, RESIDING AT
T.C.21/1750, RADHABHAVAN, KARAMANA,
THIRUVANANTHAPURAM.

38. DR. RADHAKRISHNAN, RESIDING AT
ARYANA, THIRUVANANTHAPURAM.

39. SOCIAL JUSTICE FOUNDATION,
REPRESENTED BY ITS SECRETARY,
T.C.46/1107, SARA BUILDINGS,
THIRUVANANTHAPURAM.

40. THE CHAIRMAN, T.C.46/1107,
SARA BUILDINGS, ARYASALA,
THIRUVANANTHAPURAM.

41. THE GENERAL SECRETARY,
SOCIAL JUSTICE FOUNDATION, T.C.46/1107,
SARA BUILDINGS, ARYASALA, THIRUVANANTHAPURAM.

42. THE VICE CHAIRMAN,
SOCIAL JUSTICE FOUNDATION, T.C.46/1107,
SARA BUILDINGS, ARYASALA, THIRUVANANTHAPURAM.

43. THE JOINT SECRETARY,
SOCIAL JUSTICE FOUNDATION, T.C.46/1107,
SARA BUILDINGS, ARYASALA, THIRUVANANTHAPURAM.

44. S.SUBRAMONY, S/O SIVARAMAN CHETTYAR,
T.C.20/3064, SIKA NIVAS, KRISHNA KOVIL STREET,
KARAMANA, THIRUVANANTHAPURAM.

45. P.AYYAPPAN, T.C.20/1362,
KARAMANA, THIRUVANANTHAPURAM.

BY ADV. SRI.LIJI.J.VADAKEDOM
SRI.P.GOPALAKRISHNAN NAIR
SRI.M.RAMASWAMY PILLAI
SRI.P.M.JOSEPH

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 06/08/2007 ALONG WITH WPC NO.22943 OF 2007,
THE COURT ON 18/08/2007 DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P1: COPY OF THE O.P.107/06 OF DISTRICT COURT, TVPM.

EXT.P2: COPY OF ORDER DTD. 22/11/2006 IN I.A.2771/06 IN O.P.107/06 OF II.ADDL. DISTRICT COURT, TVPM.

EXT.P3: COPY OF THE ORDER DTD. 7/12/2006 IN WP(C) 32605/06 OF THIS HONOURABLE COURT.

EXT.P4: COPY OF THE ORDER DTD. 19/01/2007 IN I.A.149/07 IN O.P.107/06.

EXT.P5: COPY OF THE ORDER DTD. 4/04/2007 IN I.A.958/07 IN O.P.107/06.

EXT.P6: COPY OF THE JUDGMENT DTD. 12/03/2007 IN WP(C) 32605/06 OF THIS HONOURABLE COURT.

EXT.P7: COPY OF THE ORDER DTD. 25/05/2007 IN I.A.1800/07 IN O.P.107/06.

EXT.P8: COPY OF THE AFFIDAVIT AND PETITION IN I.A.2032/07 IN OP 107/06.

EXT.P9: COPY OF THE COUNTER AFFIDAVIT TO I.A.2032/07 DTD. 14/06/07.

EXT.P10: COPY OF THE ORDER DTD. 22/06/2007 IN I.A.2032/07.

EXT.P11: COPY OF THE AFFIDAVIT AND PETITION DTD. 2/07/2007 IN I.A.2032/07 IN O.P.107/06.

EXT.P12: COPY OF THE OBJECTION TO I.A.2032/07 DTD. 2/07/2007 BELOW.

EXT.P13: COPY OF THE ORDER DTD. 4/07/2007 IN I.A.2032/07 IN O.P.107/06.

EXT.P14: COPY OF THE AFFIDAVIT AND PETITION IN I.A.2301/07 IN O.P.107/06.

...2/-

EXT.P15: COPY OF THE OBJECTION TO EXHIBIT P14.

EXT.P16: COPY OF THE AFFIDAVIT AND PETITION IN I.A.2317/07 IN 107/06.

EXT.P17: COPY OF THE OBJECTION TO EXHIBIT P16.

EXT.P18: COPY OF THE ORDER DTD. 17/07/2007 IN I.A.2032/07 IN O.P.NO.107/06.

3RD RESPONDENT'S EXHIBITS:

EXT.R3(A): COPY OF THE LIST OF OFFICE BEARERS AND MEMBERS OF GOVERNING BODY ELECTED ON 21/09/2003.

EXT.R3(B): COPY OF THE ADVERTISEMENT PUBLISHED IN MALAYALA MANORAMA DAILY DTD. 29/06/2007.

EXT.R3(C): COPY OF THE I.A.2193/07 IN O.P.107/2006 ON THE FILE OF THE HON'BLE DISTRICT COURT, TVM.

EXT.R3(D): COPY OF THE ADVERTISEMENT PUBLISHED IN MALAYALA MANORAMA DAILY DTD. 7/07/2007.

EXT.R3(E): COPY OF THE NOTICE DTD. 7/07/2007.

EXT.R3(F): COPY OF THE REQUISITION FORM OF ADMISSION FOR B.TECH COURSE FROM A STUDENT.

EXT.R3(G): COPY OF THE ANNEXURE – A3 IN EXT.P16(1A).

/TRUE COPY/

P.S.TO JUDGE

KSS

M.N.KRISHNAN, J

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W.P.(C)Nos. 22705 & 22943 OF 2007

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Dated this the 18th day of August 2007

JUDGMENT

W.P.(C)No.22705 of 2007 is filed by the 4th petitioner in O.P.No.107 of 2006 and the 4th respondent in I.A.No.2032 of 2007 in the very same O.P. Respondents 1 to 5 are the office bearers. He is a member of the Social Justice Foundation registered under the Travancore Cochin Literary Scientific and Charitable Society Registration Act. The O.P. has been filed alleging mis-management by 34 members of the said society. In the O.P. the prayer is to quash Ext.P18 and not to interfere with the majority decision of the collegium.

2. W.P.(C)22947 of 2007 is filed by one Radhakrishnan to set aside the very same order Ext.P18 which is marked as Ext.P7 in W.P.(C) No.22705/2007. There is also a prayer to direct the II Addl.District Court, Thiruvananthapuram to pass final orders on Ext.P3 application. The contesting respondents have resisted the claim on the ground that the order passed by the District Judge is perfectly in order and on account of the highhandedness of the Secretary of the society who is a member of the

collegium, admission applications are not even sold to the persons who deserve it and therefore the writ petitions should be dismissed. It is seen that the prayer in the main O.P. which is pending before the II Addl.District Court, Thiruvananthapuram is to frame a new scheme for a better and efficient management of the society, and allegations of misappropriation, etc, are contended therein. The court below as per Ext.P4 order in I.A.No.149 of 2007 permitted the Secretary, who was holding the office at the time of filing this petition shall continue in the office or position till further orders from the court but subject to any direction or order of this court. Thereafter on 4.4.2007, the said court passed an order whereby the Secretary was directed not to admit any student in the management quota without the prior permission of the court. Another order was passed on 25.5.2007 in I.A.No.1800 of 2007 which was relating to the election. Then on 22.6.2007 the court passed an order in I.A.No.2032 of 2007 whereby the court constituted a collegium for the purpose of admission of the students. There are 240 seats out of which the management quota comes to 120 seats. The court directed (1)Sri.P.Ramaswamy, (2)Sri.S.Kumaresan, (3) Sri.R.Sankar, (4) Sri.P.Radhakrishnan and (5) the Principal of the College to constitute a collegium for the purpose of admission of the students. The collegium was directed to invite applications from students and process the

same and admit them in accordance with law. Then the court on 4.7.2007 passed an order whereby it extended the time for receipt of applications for a period of 7 days from 4.7.2007. It was also directed that the applications should be returned within 24 hours from the last date of issuance of application form. Another order Ext.P18 which is now impugned was passed on 17.7.12007. The court by the said order directed that the "Advocate can submit the application forms of students who are included in a list which is submitted before this court, allegedly denied application forms are at liberty to file fresh application forms in duplicate in the format herein annexed which is the copy of the application form furnished by the first respondent before this court bearing No.300". Then the court also gave the modus of the selection of the candidates. The contesting respondents in the writ petition would submit that the collegium constituted decided to issue 300 applications alone and that has been done and one application form has been submitted before the court which means 299 application forms have been sold out, out of which they have received 195 applications for management quota and 54 applications for the NRI quota. It is contended that selection has to be done from among these persons and so the order passed by the court directing to receive further applications is invalid and it should be set aside. On the other hand, the contesting

respondents in the writ petition would submit that the Secretary, who had no independent authority has been functioning unilaterally and had sold the application forms from not the collegium campus but from outside and had denied issuance of applications to persons competent to apply and entitle to get with the connivance of the Principal and therefore the order passed by the learned District Judge requires no interference.

3. Ext.R3(b) is the first advertisement, a copy of which is produced (reported in Malayala Manorama) calling for the applications from persons on payment of Rs.100/- or in the case by post at the rate of Rs.150/-. The said notification came in the paper published on 29.6.2007 and the last date for receiving the application was fixed as 7.7.2007. It has to be stated that there is no mention that only 300 application forms will be sold. Ext.R3(c) in W.P.(C)No.22705 of 2007 is filed by Sri.P.Ramaswamy, one of the members of the collegium wherein he had stated that the Secretary in connivance of the Principal had denied application forms to persons who are entitled to it and had sold it enmass so as to get the same as per his whims and fancy. Ext.R3(d) is another publication which was effected in the light of the order of the court whereby the date for application was extended by 7 days from 4.7.2007. It is published Ext.R3(d) that application for admission under the management quota will be described

upto 12.7.2007 and the last date of receipt is 14.7.2007. The publication is seen made by the Principal and the General Secretary. Ext.R3(e) is a notice which appeared in the notice board of the college wherein it is stated that it was decided to print only 300 application forms and all have been sold out except one by 7.7.2007. In other words, the persons who approached the authorities for the receipt of the applications were informed that there was no more application form to be sold out. The District Court by forming the collegium or by passing an order on 4.7.2007 never mentioned or restricted the numbers of application forms to be distributed. The writ petitioners rely upon the minutes of the collegium and contend that it was the unanimous decision of the collegium and therefore nobody can go behind the same. A photocopy of the same was made available to me and what is stated in the minutes is "300.....". Nowhere in the minutes even if it is accepted by arguments' sake a mention is made about the factum that only 300 applications need be invited for consideration in the management quota. When the court on 4.7.2007 had extended the period of the issuance of applications by 7 days, i.e. upto 12.7.2007 it was not correct on the part of any of the authorities to publish a notice in the Board to the effect that the forms had been sold out. So the apprehension entertained by the contesting respondents appears to be true and therefore

the court passed an order which is impugned now. It is also to be understood that though 299 application forms were sold, only about 250 applications had been resubmitted. Therefore there is considerable force in the argument of the learned counsel for the respondents that all is not well with the selection process conducted by the Secretary and the Principal. The court below on 17.7.2007 considered this matter and gave further direction to include applications received and conducted the selection process. When there are 120 seats available on the management quota the principle underlying is to fill up the seats in toto and further there must be an opportunity given to well-merited students who also intend to apply. One cannot shut out the future of a bright student, if he is entitled to get admission and if he has approached the authorities as found from the advertisement for an application.

4. Therefore the order which is passed by the learned Addl.District Judge really shows the intention of the court to have a competitive collection of the application forms and selection from a wide range who had applied within the time fixed by the court. There is some force when the contesting respondents say that all was not well in selling the application forms. It is a collective responsibility of the collegium and the said body had to be taken into confidence and decision has to be taken and implemented.

What the court has done by passing the impugned order is only to have a consideration of all application forms which had come into the court as directed by it for the purpose of selection. So far as the amendment of the byelaw, etc. are concerned which are all under challenge I cannot express any opinion in this writ petition because it requires evidence as well as materials.

Therefore the order impugned does not suffer from any infirmity or illegality and it does not call for any interference by this court. Therefore both the writ petitions are dismissed. The court below, if possible, shall try to expedite the trial of O.P.No.107 of 2006 pending before that court.

M.N.KRISHNAN, JUDGE

Cdp/-